PART 701—REPORTING OF OFFSETS AGREEMENTS IN SALES OF WEAPON SYSTEMS OR DEFENSE-RELATED ITEMS TO FOREIGN COUNTRIES OR FOREIGN FIRMS

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SOURCE: 59 FR 61796, Dec. 2, 1994, unless otherwise noted.

§ 701.1 Purpose.

The Defense Production Act Amendments of 1992 require the Secretary of Commerce to promulgate regulations for U.S. firms entering into contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offset agreements exceeding $5,000,000 in value to furnish information regarding such agreements. The Secretary of Commerce has designated the Bureau of Industry and Security as the organization responsible for implementing this provision. The information provided by U.S. firms will be aggregated and used to determine the impact of offset transactions on the defense preparedness, industrial competitiveness, employment, and trade of the United States. Summary reports are submitted annually to Congress pursuant to Section 309 of the Defense Production Act of 1950, as amended.

[59 FR 61796, Dec. 2, 1994, as amended at 74 FR 68140, Dec. 23, 2009]

§ 701.2 Definitions.

(a) *Offsets*—Compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations.

(b) *Military Export Sales*—Exports that are either Foreign Military Sales (FMS) or commercial (direct) sales of defense articles and/or defense services as defined by the Arms Export Control Act and International Traffic in Arms Regulations.

(c) *Prime Contractor*—A firm that has a sales contract with a foreign entity or with the U.S. Government for military export sales.

(d) *United States*—Includes the 50 states, the District of Columbia, Puerto Rico, and U.S. territories.

(e) *Offset Agreement*—Any offset as defined above that the U.S. firm agrees to in order to conclude a military export sales contract. This includes all offsets, whether they are ''best effort'' agreements or are subject to penalty clauses.

(f) *Offset Transaction*—Any activity for which the U.S. firm claims credit for full or partial fulfillment of the offset agreement. Activities to implement offset agreements are categorized as co-production, technology transfer, subcontracting, credit assistance, training, licensed production, investment, purchases and other. Paragraphs (f)(1) through (f)(8) of this section provide examples of the categories of offset transactions.

(1) *Example 1.* Company A, a U.S. firm, contracts for Company B, a foreign firm located in country C, to produce a component of a U.S.-origin defense article subject to an offset agreement between Company A and country C. The defense article will be sold to country C pursuant to a Foreign Military Sale and the production role of Company B is described in the Letter of Offer and Acceptance associated with that sale and a government-to-government co-production memorandum of understanding. This transaction would be categorized as co-production and would, like all co-production transactions, be direct.

(2) *Example 2.* Company A, a U.S. firm, transfers technology to Company B, a foreign firm located in country C, which allows Company B to conduct research and development directly related to a defense article that is subject to an offset agreement between Company A and country C. This transaction would be categorized as technology transfer and would be direct because the research and development is

directly related to an item subject to the offset agreement.

(3) *Example 3.* Company A, a U.S. firm, contracts for Company B, a foreign firm located in country C, to produce a component of a U.S.-origin defense article subject to an offset agreement between Company A and country C. The contract with Company B is for a direct commercial sale and Company A does not license Company B to use any technology. The transaction would be categorized as subcontracting and would, like all subcontracting transactions, be direct.

(4) *Example 4.* Company A, a U.S. firm, makes arrangements for a line of credit at a financial institution for Company B, a foreign firm located in country C, so that Company B can produce an item that is not subject to the offset agreement between Company A and country C. The transaction would be categorized as credit assistance and would be indirect because the credit assistance is unrelated to an item covered by the offset agreement.

(5) *Example 5.* Company A, a U.S. firm, arranges for training of personnel from Company B, a foreign firm located in country C. The training is related to the production and maintenance of a U.S.-origin defense article that is subject to an offset agreement between Company A and country C. The transaction would be categorized as training and would be direct because the training is directly related to the production and maintenance of an item covered by the offset agreement.

(6) *Example 6.* Company A, a U.S. firm, contracts for Company B, a foreign firm located in country C, to produce a component of a U.S.-origin defense article that is subject to an offset agreement between Company A and country C. The contract with Company B is a Foreign Military Sale and Company A licenses Company B to use Company A's production technology to produce the component. There is no coproduction agreement between the United States and country C. The transaction would be categorized as licensed production and would be direct because it involves the item covered by the offset agreement.

(7) *Example 7.* Company A, a U.S. firm, makes an investment in Company B, a foreign firm located in country C, so that Company B can create a new production line to produce a component of a defense article that is subject to an offset agreement between Company A and country C. The transaction would be categorized as investment and would be direct because the investment involves an item covered by the offset agreement.

(8) *Example 8.* Company A, a U.S. firm, purchases various off-the-shelf items from Company B, a foreign firm located in country C, but none of these items will be used by Company A to produce the defense article subject to the offset agreement between Company A and country C. The transaction would be categorized as purchases and would, like all purchase transactions, be indirect.

(g) *Direct Offset*—an offset transaction directly related to the article(s) or service(s) exported or to be exported pursuant to the military export sales agreement. See the examples illustrating offset transactions of this type in §§ 701.2(f)(1), 701.2(f)(2), 701.2(f)(3), 701.2(f)(5), 701.2(f)(6) and 701.2(f)(7) of this part.

(h) *Indirect Offset*—an offset transaction unrelated to the article(s) or service(s) exported or to be exported pursuant to the military export sales agreement. See the examples illustrating offset transactions of this type in §§ 701.2(f)(4) and 701.2(f)(8) of this part.

[59 FR 61796, Dec. 2, 1994, as amended at 74 FR 68140, Dec. 23, 2009]

§ 701.3 Applicability and scope.

(a) This rule applies to U.S. firms entering contracts for the sale of defense articles or defense services (as defined in the Arms Export Control Act and International Traffic in Arms Regulations) to a foreign country or foreign firm for which the contract is subject to an offset agreement exceeding $5,000,000 in value.

(b) This rule applies to all offset transactions completed in performance of existing offset commitments since January 1, 1993 for which offset credit of $250,000 or more has been claimed from the foreign representative, and new offset agreements entered into since that time.